

A redemptive moment

A conservative British historian nailed down the role of culture in creating the law when he said, “The trouble with marijuana is that it’s the black man’s vice.” He was referring to the role of racial prejudice in the evolution of the law in the erstwhile British colonies, among which India was the most prominent. Nothing else can explain the perception that consumption of marijuana is *louche*. In India, cultivation, possession, sale, transportation of ganja (cannabis) is prohibited without a licence even as serving *bhang* on auspicious occasions is a time-honoured tradition in parts of the country.

It is a similar internalisation of colonial prejudice that leads India’s middle class to flaunt a taste for whisky while distancing itself from “country” liquor. While all these demonstrate slavishness to non-Indian cultural values, it is yet less monstrous than the effect of some other codes imported into India during the colonial era.

Among these an important, but not necessarily the most prominent, [one is Section 377 of the Indian Penal Code](#) (IPC) which criminalises sexual intercourse considered “against the order of nature”. In effect this criminalises all intercourse other than the procreative. The colonial administrator had an eagle eye, as he had even identified animals as potential partners of man in this unholy act. For over 150 years an Indian minority whose numbers we are unable to divine with accuracy has been yoked to a law without a narrative. Unless you are of a religious bent you are unlikely to restrict the idea of sex to procreation. Moreover, can consensual sex among citizens ever be considered the legitimate business of the state, which is what Section 377 implies?

Post-colonial India, though a democracy with some considerable achievements, has failed miserably to interrogate the laws under which it is governed; laws made to serve the colonial project of Britain. But now, with an urgency that has surprised the country’s LGBT community, of which I am a member, the Supreme Court of India has turned the tables by entertaining a curative petition in the matter of its own ruling in 2013 that Section 377 is not violative of India’s Constitution.

An empowerment

The court has given an opportunity to LGBT activists to make their case, for the religious groups that oppose the decriminalisation of consensual same-sex acts to state their position and asked the Government of India what it has to say about retaining Section 377. In one fell swoop the Court has empowered a group marginalised beyond imagination, one not just excluded from social life but actually criminalised on the basis of mere prejudice. It matters little what the final ruling will be in the case for one thing is certain. There will be no return to the original scoreboard so far as sexual rights is concerned. The idea of sexual equality has now been sown and will only gain currency.

Even as the hearings in the Supreme Court have been covered extensively in the media, it has willy nilly drawn attention to two related aspects — namely the role of the political class and the question of the democratic content of the Indian LGBT movement itself.

Scant political concern

The political class manages a democracy. In the Westminster model that we follow, this opportunity goes to the political party that gains power every five years. It is astounding that India’s political parties have had next to nothing to say on the repeal of Section 377 while the hearings are on. Even the Indian Psychiatric Society has rushed through a position paper stating that

homosexuality is not a mental disorder. Though this has come a full 45 years after a similar ruling by its American counterpart, it at least reflects a concern with being seen as credible.

Fall of Section 377 will embolden LGBTQ community: CJI Dipak Misra

No such concern appears to afflict our political parties. Clearly the Bharatiya Janata Party's cultural nationalism does not extend to erasing a colonial stain on Indian life. The repression that grips its psyche is reflected in the deposition reportedly made in court by the Government of India that not even "unnatural sex" in private need be treated as an offence. This mealy-mouthedness is of a piece with the tweet by a leading member of the party some years ago that gay men — he had chosen the colonial "homos" — are "genetically handicapped". He later refined his position to tweet that "if they flaunt it, it has to be punished & therefore there has to be Section 377 of the IPC". Now who has decided that flaunting your sexuality is any more vulgar than flaunting your foreign economics degree?

As for the Congress party, whose leadership considers it to be India's answer to social democracy, its silence leaves it open to the charge of cowardice. In a party that otherwise makes a show of its concern for the minorities, its own foreign-educated strategists appear to have missed the observation by John Rechy, a pioneer of the American gay movement, that gay men are "the only minority against whose existence there are laws".

Gay sex: Centre leaves it to wisdom of SC to decide on constitutionality of Section 377 IPC

For the Congress party it seems the only minorities are the religious ones. In an unusual gesture, soon after the reading down of Section 377 by the Delhi High Court in 2009, the Law Minister was featured on television assuring men in cassocks that "it is wonly a reading" (sic), implying that the Congress Party 'would keep in mind the sentiments of religious minorities'. Why is it necessary to appease Christian lobbies in India on the matter after Pope Francis has said "Whom am I to judge?" when asked about same-sex relationships? The president of the Congress party recently met Muslim 'intellectuals' presumably to listen to their concerns. This is only appropriate in a democracy. However, at the same time and at the very least he could have used Twitter, a medium that he appears to enjoy using, to express his support to LGBT Indians as they face a trial of monumental significance not just to them but for Indian democracy itself.

More generally, it reflects the quite extraordinary evolution of democracy in India that groups claiming to represent the religious minorities, while scouring the political space for every privilege, try to deny the most basic rights to a secular minority, the LGBT. As an Indian committed to a secular state, I can only repeat "this was not what I had meant at all".

Questions for the community

Finally though, the ball returns to the court of the LGBT community itself. As we contemplate a future after the closing of the trial, whatever may be the verdict, the question is how the community will govern itself and what role it will play in spreading the freedom it has received from the mere playing out of its case in the highest court in the land these few days past. Will India's LGBT members create an inclusive world, embracing people of all ages and every appearance? Will they be true to its colours and be part of a rainbow coalition to make India a democracy that includes others on the margins, namely women, the manual scavengers and the physically challenged? Only time will tell. For the moment though, abandoned by the political parties and their intellectual servitors, they may be allowed to savour this redemptive moment for Indian democracy by remembering the hymn 'Amazing Grace': "My chains are gone, I've been set free".

Pulapre Balakrishnan is Professor at Ashoka University, Sonapat, Haryana

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